

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 9 4 55 PM '04

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(Fruita, Colorado)) MB Docket No. 04-300
) RM-11022
)
(Kerman, California)) MB Docket No. 04-301
) RM-10969
)
(Lockney, Texas)) MB Docket No. 04-302
) RM-11020
)
(Lone Wolf, Oklahoma)) MB Docket No. 04-303
) RM-11025
)
(Quanah, Texas)) MB Docket No. 04-304
) RM-11021
)
(Oak Harbor, Washington)) MB Docket No. 04-305
) RM-10980
)
(Orchard Mesa, Colorado)) MB Docket No. 04-306
) RM-10754
)
(Rising Star, Texas)) MB Docket No. 04-307
) RM-10982
)
(Twentynine Palms, California)) MB Docket No. 04-308
) RM-10973
)
(Waterford, California)) MB Docket No. 04-309
) RM-10974

NOTICE OF PROPOSED RULEMAKING**Adopted: August 4, 2004****Released: August 9, 2004****Comment Date: September 30, 2004****Reply Comment Date: October 15, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a multiple docket *Notice of Proposed Rule Making* setting forth ten separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹ The petitioner for each proposal has stated that it will apply for each requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Information Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 04-300; RM-11022

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 255C3 at Fruita, Colorado, as that community's second local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Fruita, Colorado	260C	255C3, 260C

Coordinates: 39-15-05 NL and 108-50-16 WL

Additional Information: The allotment requires a site restriction of 14 kilometers (8.7 miles) northeast to avoid a short-spacing to the vacant allotment site of Channel 253C3 at Palisade, Colorado.

FCC Contact: Rolanda F. Smith (202) 418-2180

B. MB Docket No. 04-301; RM-10969

Petitioner: Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 224A at Kerman, California as that community's third local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Kerman, California	232A, 237A	224A, 232A, 237A

¹ 47 C.F.R. 73.202(b).

Coordinates: 36-40-37 NL and 120-12-08 WL

Additional Information: The allotment requires a site restriction of 13.8 kilometers (8.6 miles) west to avoid a short-spacing to the license sites of FM Station KZFO, Channel 224B, Clovis, California and FM Station KMJO, Channel 224B1, Marina, California.

FCC Contact: Rolanda F. Smith (202) 418-2180

C. MB Docket No. 04-302; RM-11020

Petitioner: Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205

Proposal: Allot Channel 271C3 at Lockney, Texas as that community's first local aural transmission service.²

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Lockney, Texas	-----	271C3

Coordinates: 34-05-00 NL and 101-23-15 WL

Additional Information: This allotment requires a site restriction of 6.7 kilometers (4.2 miles) southeast to avoid short-spacing to the vacant allotment site of Channel 269A at Turkey, TX and the license sites of FM Station KATP, Channel 270C1, Amarillo, Texas and Station KZII-FM, Channel 273C1, Clovis, New Mexico.

FCC Contact: Rolanda F. Smith (202) 418-2180

D. MB Docket No. 04-303; RM-11025

Petitioner: Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205

Proposal: Allot Channel 224A at Lone Wolf, Oklahoma, as that community's first local aural transmission service.³

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Lone Wolf, Oklahoma	-----	224A

² Lockney is an incorporated city located in the 2000 US Census with a population of 2,207 persons. Lockney has its own mayor, post office, volunteer fire department, school system, city offices, and a number of churches and commercial establishments.

³ Lone Wolf is an incorporated city located in the 2000 US Census with a population of 500 persons. Lone Wolf has its own mayor, post office, volunteer fire department, police department, public schools, city offices, and a number of churches.

Coordinates: 34-58-53 NL and 99-09-53 WL

Additional Information: This allotment requires a site restriction of 7.8 kilometers (4.8 miles) east to avoid short-spacing to the license sites of Station KOMA-FM, Channel 223C, Oklahoma, Oklahoma, Station KNIN-FM, Channel 225C1, Wichita Falls, Texas and FM Station KBKH, Channel 225C2, Shamrock, Texas.

FCC Contact: Rolanda F. Smith (202) 418-2180

E. MB Docket No. 04-304; RM-11025

Petitioner: Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205

Proposal: Allot Channel 255C3 at Quanah, Texas, as that community's second local aural transmission service.⁴

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Quanah, Texas	265C3	255C3, 265C3

Coordinates: 34-10-04 NL and 99-46-49 WL

Additional Information: This allotment requires a site restriction of 14.9 kilometers (9.3 miles) south to avoid short-spacing to the vacant allotment site of Channel 254A at Seymour, Texas and the license site of FM Station KRIJ, Channel 253C, Elk City, Oklahoma.

FCC Contact: Rolanda F. Smith (202) 418-2180.

F. MB Docket No. 04-305; RM-10980

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 289A at Oak Harbor, Washington, as that community's first local aural transmission service.⁵

⁴ The proposed Quanah allotment conflicts with a counterproposal to allot Channel 255C3 to Quanah, Texas, in MM Docket No. 00-148, which was dismissed by *Report and Order*. See *Quanah, TX et. al*, 18 FCC Rcd 9495 (MB 2003). An Application for Review of the *Memorandum Opinion and Order* issued, in MM Docket No. 00-148 was filed on June 21, 2004, which excluded the dismissed allotment of Channel 255C3 at Quanah, TX. See *Quanah, TX et. al*, 19 FCC Rcd 7159 (MB 2003). As such, we accept the proposed Quanah allotment as a contingent rulemaking proposal, however, we caution parties that this proposal will be granted subject to the outcome of MM Docket No. 00-148, since this proceeding is effective but not final. See *Auburn, Alabama, et al*, 18 FCC Rcd 10333 (MB 2003).

⁵ Oak Harbor is an incorporated city located in Island County with a 2000 U.S. Census population of 19,795 persons.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Oak Harbor, Washington	-----	289A

Coordinates: 48-17-36 NL and 122-38-31 WL

Additional Information: This allotment is at city reference coordinates and requires no site restriction. Oak Harbor is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Canadian concurrence has been requested, as a specially negotiated short-spaced allotment, since the proposed Oak Harbor allotment is short-spaced to Canadian Station CBU-FM, Channel 289C, Vancouver, BC.

A minor change application was later filed by Jodesha Broadcasting, Inc., licensee of FM Station KJET, Channel 289C1, Raymond, Washington, which conflicts with the proposed Oak Harbor allotment. *See* BPH-20031021ADK. As such, this application will be treated as a counterproposal in this proceeding.

FCC Contact: Rolanda F. Smith (202) 418-2180.

G. MB Docket No. 04-306; RM-10659

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 249C3 at Orchard Mesa, Colorado as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Orchard Mesa, Colorado	-----	249C3

Coordinates: 39-04-47 NL and 108-36-00 WL

Additional Information: This allotment requires a site restriction of 5.8 kilometers (3.6 miles) northwest to avoid short-spacing to the vacant allotment site of Channel 249C3 at Aspen, Colorado.

Orchard Mesa is listed in the 2000 U.S. Census as a Census Designated Place ("CDP") located in Mesa County, Colorado with a population of 6456 persons. The designation of an area as a CDP raises the presumption that an area is a "community" for allotment purposes, that presumption is rebuttable.⁶ Petitioner must submit additional information demonstrating that Orchard Mesa is a "community" for allotment purposes. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, public service, or religious organizations and services in the community.⁷

FCC Contact: Rolanda F. Smith (202) 418-2180

⁶ *See Stock Island, Florida*, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (M.M. Bur. 1992).

⁷ *See Hayfield, VA*, 12 FCC Rcd 16373 (M.M. Bur 1997) and *Kenansville, Florida*, 5 FCC Rcd 2663 (M.M. Bur 1990), *aff'd.*, 10 FCC Rcd 9831(1995).

H. MB Docket No. 04-307; RM-10982

Petitioner: Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205

Proposal: Allot Channel 290C3 at Rising Star, Texas, as that community's first local aural transmission service.⁸

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Rising Star, Texas	-----	290C3

Coordinates: 32-05-54 NL and 98-58-00 WL

Additional Information: This allotment is at city reference coordinates and requires no site restriction.

FCC Contact: Rolanda F. Smith (202) 418-2180.

I. MB Docket No. 04-308; RM-10973

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 270A at Twentynine Palms, California, as that community's third FM commercial service.⁹

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Twentynine Palms, California	242A, 299B1	242A, 270A, 299B1

Coordinates: 34-09-41 NL and 116-03-47 WL

Additional Information: This allotment requires a site restriction of 3.5 kilometers (2.2 miles) north to avoid short-spacing to the license site of FM Station KWID, Channel 270C, Las Vegas, Nevada and Mexican Station XHPF-FM, Channel 270B, Mexicali, BN. Mexican concurrence has been requested since Twentynine Palms is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

FCC Contact: Rolanda F. Smith (202) 418-2180.

⁸ Rising Star is an incorporated city located in the 2000 US Census with a population of 835 persons. Rising Star has its own mayor along with six city councilmen. Rising Star also has an elementary, junior high, and high school with a student population of 240 students.

⁹ AM Station KQYN is also assigned to Twentynine Palms.

J. MB Docket No. 04-309; RM-10974

Petitioner: Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 294A at Waterford, California, as that community's first local aural transmission service.¹⁰

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Waterford, California	-----	294A

Coordinates: 37-40-21 NL and 120-38-26 WL

Additional Information: This allotment requires a site restriction of 11.1 kilometers (6.9 miles) east to avoid short-spacing to the license site of FM Station KEZR, Channel 293B, San Jose, California.

FCC Contact: Rolanda F. Smith (202) 418-2180.

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before September 30, 2004, and reply comments on or before October 15, 2004, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as listed above for each docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹¹ This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

6. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following:

¹⁰ Waterford is an incorporated city located in Stanislaus County in northern California with a 2000 U.S. Census population of 6,924 persons.

¹¹ *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend 47 C.F.R. Sections 73.202(b), 73.504 and 73.606(b).* 46 FR 11549 (February 9, 1981).

David Tillotson, Esq.
Counsel, Jodesha Broadcasting, Inc.
In re: MB Docket No. 04-
4606 Charleston Terrace NW
Washington, D.C. 20007

7. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.